IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4412 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS AND LEGAL REPRESENTATIVEOF BAIRAJBA NARSINH GOHIL
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 4412 of 2004
MR HARIN P RAVAL for Petitioner No. 1
Mr. KD Pandya, AGP for Respondent No. 1-5
MR JF SHAH for Respondent No. 6-7

CORAM : HON'BLE MR.JUSTICE M.R. SHAH
Date of decision: 17/08/2004

ORAL JUDGEMENT

Rule. Shri KD Pandya, learned AGP waives service of Rule on behalf of respondents No. 1 to 5. Shri JF Shah, learned advocate waives service of Rule on behalf of respondents No. 6 and 7. With the consent of parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order dated 20th October 2003 passed by the Secretary (Appeals), Revenue Department, STate of Gujarat, Ahmedabad, in Revision Application No. 23 of 1998 in partly allowing the said revision application and quashing and setting aside the judgment and order passed by the Collector, Narmada dated 9.4.1998 and also of the Deputy Collector, Rajpipla dated 31st January 1998 and of the Mamlatdar, Nandod dated 27.9.1997 with regard to Entry No. 823 and remanding the matter to the Mamlatdar, Nandod for deciding afresh considering the observations made in his order dated 20th October 2003.

3. One Narsinh Soma was owner of land bearing Survey No. 37, 39/6, 150/1, 177, 250 and 265 situate at Village Rampura of Taluka-Rajpipla, District Bharuch (now District-Narmada). The said Narsinh Soma had married one Roopba and Roopba was his first wife. The said Narsinh Soma had also married one Bajuba. It is the case of petitioner that the first wife of Narsinh Soma, i.e., Roopba had one daughter Berajben and Bajuba had two daughters Ansuyaben and Devuba. Thus, the said Narsinh Soma had in fact 3 daughters Ansuyaba, Devuba and Berajba. The said Narsinh Soma died on 9.8.1955. It is the case of the petitioner that though Narsinh Soma had 3 daughters on the death of Narsinh Soma the name of Bajuba was entered into the record of rights and thereafter on the death of Bajuba the names of Ansuyaben and Devuben were entered into the record of rights vide Entry No. 755 dated 7.1.1984 excluding Berajben. It seems that the said Berajben submitted an application to include her name in the record of rights as co-owner/co-occupier along with the names of Devuben and Ansuyaben as heirs of deceased Narsinh Soma and vide Entry No. 823 dated 19th August 1996 the name of Berajben was entered into record of rights along with Devuben and Ansuyaben as heirs of deceased Narsinh Soma. The said Entry No. 823 came to be challenged by Ansuyaben before the Mamlatdar, Nandod and the Mamlatdar, Nandod by his order dated 21.7.1997 certified Entry No. 823 and set aside the objections raised by Ansuyaben. Being aggrieved and dissatisfied with the order passed by the Mamlatdar, Nandod, dated 21.7.1997 in certifying Entry No. 823 Ansuyaben preferred appeal before the Deputy Collector, Rajpipla being RTS Appeal No. 22/1997-1998 the Deputy Collector, Rajpipla by his order dated 31.9.1998 dismissed the said appeal confirming the order passed by Mamlatdar, Nandod dated 21.7.1997 in certifying the Entry No. 823 in

favour of Berajba.

4. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Rajpipla dated 31.1.1998, Ansuyaben and Devuben preferred appeal before the Collector, Narmada being Appeal No. 11 of 1998. The Collector, Narmada-Rajpipla also by his judgment and order dated 9.7.1998 dismissed the said appeal confirming the order passed by both the authorities below in certifying Entry No. 823. Being aggrieved and dissatisfied with the judgment and order dated 9.7.1998 passed by the Collector, Narmada/Rajpipla passed in Appeal No. 97-98 Ansuyaben and Devuben preferred a revision application before the Secretary (Appeals), Revenue Department which was numbered as Revision Application No. 23 of 1998. The Secretary (Appeals) by his judgment and order dated 9.12.2003 partly allowed the said revision application by quashing and setting aside the orders passed by the authorities below by certifying Entry No. 823 and directed Mamlatdar, Nandod to hold inquiry whether how Narsinh Soma became the owner of the land in question; what was the right of first wife of Narsinh Soma, i.e., Roopba, while the name of Roopba Narsinh Soma was not entered into and who were the heirs of deceased Narsinh Soma and remanded the matter to Mamlatdar, Nandod.

5. Being aggrieved and dissatisfied with the judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat, dated 20th October 2003/10.12.2003 in Revision Application No. 23/1998, the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India. The petitioner claims to be the heir of deceased Berajba, daughter of Narsinh Soma by Will as during the pendency of the aforesaid proceedings Berajba has died and the petitioner Dipaksinh Surajsinh Gohil who is son-in-law of Berajba who according to the petitioner has become the owner by way of Will.

6. Shri Harin Raval, learned advocate appearing on behalf of the petitioner has submitted that the judgment and order passed by the revisional authority dated 9.12.2003 is absolutely illegal and without jurisdiction. He has further submitted that in fact on the death of Berajba, daughter of Narsinh Soma her heirs were not brought on record and in the revision application the revisional authority ought to have passed an order of abatement of the aforesaid revision application and ought not to have decided the revision application on merits. He has further submitted that even otherwise on merits also as Berajba was daughter of Narsinh Soma she was

excluded and her name was not mutated in the record of rights as heir of deceased Narsinh Soma, and Entry No. 823 was rightly mutated and the name of Berajba was rightly made in the record of rights as co-occupier/co-owner of the land in question along with Ansuyaba and Devuba. He has further submitted that the direction given by the revisional authority to the Mamlatdar was beyond the scope of the inquiry in RTS proceedings.

7. Shri JF Shah, learned advocate appearing on behalf of Ansuyaben and Devuben, respondents No. 6 and 7 herein, has supported the order passed by the revisional authority. He has further submitted that in fact an application was already given before the revisional authority to bring on record the heirs of Berajba and in fact the petitioner Dipaksinh Gohil had submitted an application as a heir of Berajba and therefore when he was already brought on record as heir of deceased Berajba there was no question of objecting to the revision application. He has further submitted that the application submitted by Berajba claiming to be heir of deceased Narsinh Soma was after a period of 35 years and the entry in favour of Ansuyaba and Devuba was never objected to by Berajba at any point of time earlier and for the first time in the year 1996-97 Berajba has come out with a case and to include her name in the record of right as heir of Narsinh Soma and therefore it is submitted that Entry No. 823 is rightly rejected by the revisional authority. He has further submitted that in fact the proper remedy for Berajba was to file a Civil Suit for establishing her right as heir of deceased Narsinh Soma and the revenue authority ought to have relegated Berajba to file a civil suit for establishing her right as heir of deceased Narsinh Soma.

8. Heard the learned advocates appearing for the parties. Vide Entry No. 755 dated 7.1.1984 the names of Ansuyaben and Devuben were entered into in the record of rights as heirs of deceased Bajuba Narsinh being daughters of Narsinh Soma. Berajba claims to be the daughter of Narsinh Soma and heir of deceased Narsinh Soma along with Ansuyaben and Devuben. Berajba submitted application in the year 1996 to include her name in the record of rights with regard to lands in question along with Ansuyaben and Devuben as heir of deceased Narsinh Soma, and Entry No. 823 was mutated by which name of Berajba came to be entered into as co-occupier and co-owner as heir of deceased Narsinh Soma along with Ansuyaben and Devuben. That entry is set aside by the revisional authority and the matter is remanded to the

Mamlatdar,Nandod for deciding the question how Narsinh Soma became the owner of land in question; why the name of Roopba, wife of Narsinh Soma was not entered into the record of rights; who are the heirs of deceased Narsinh Soma; and thereafter to mutate the names in the record of rights. As held by the Hon'ble Supreme Court of India as well as by this Court in catena of judgments, entry into record of rights does not confer any right, title or interest in favour of a person whose name is entered into record of rights. Entry in the revenue record is for fiscal purpose and has a presumptive value and it is only for the purpose of recovering revenue. Entry, ipso facto, does not confer any right, title or interest in favour of a party. The revenue authority has no jurisdiction and/or authority to decide the disputed question of title and the rights of the parties and the heirs. If there is any dispute between the heirs and/or dispute with regard to heirship, and if there is any dispute with regard to title, the Revenue authority is required to relegate the parties to file a civil suit. The Revenue authority has no jurisdiction and/or authority to decide the disputed question of title of heirship. Under the circumstances the direction given by the Secretary (Appeals) to decide the dispute with regard to heirship and the dispute with regard to title is absolutely illegal and contrary to the provisions of Section 135 of the Bombay Land Revenue Code and Rule 108 of the Bombay Land Revenue Rules. It is pointed out during the course of argument that in fact a civil suit is already pending between the parties. Under the circumstances, while quashing and setting aside the judgment and order passed by the Secretary (Appeals), REvenue Department, dated 9.12.2003 in Revision Application No. 23/1998 and continuing Entry No. 823 if the following directions are issued, it will meet the ends of justice.

(i) Entry No. 823 in favour of Berajba as heir of deceased Narsinh Soma along with Ansuyaben and Devuben is ordered to be held only for the fiscal purpose and only having presumptive value only, and only for the purpose of collecting revenue and ipso facto would not confer any right, title or interest in favour of a person in whose favour entry is made;

(ii) Entry No. 823 or subsequent Entry No. 888 in favour of the petitioner Dipsinh Gohil will be subject to ultimate outcome of the civil suit pending between the parties and the Revenue authority is directed to give effect to decision

that may be taken by the civil Court;

(iii) Only on the basis of entry, either party may not disturb the possession of each other.

(iv) The Revenue authority, i.e., Mamlatdar, Nandod is directed to make an entry with regard to land in question to the effect that the aforesaid entries No. 823 and 888 are subject to ultimate outcome of the civil suit pending between the parties.

9. For the reasons stated hereinabove, the petition succeeds. The judgment and order passed by the Secretary (Appeals), Revenue Department, dated 9.12.2003 in Revision Application No. 23 of 1998 is hereby quashed and set aside and the Entry No. 823 is restored. Subject to the aforesaid observations and directions, Rule is made absolute with no order as to costs.

rmr. [M.R. Shah, J.]